



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Custom Trainingg Aids, Inc.
File: B-237219
Date: December 19, 1989

DIGEST

1. Protest against alleged solicitation defects which are apparent prior to bid opening must be filed prior to bid opening.
2. Protest to General Accounting Office against alleged solicitation defects must be filed within 10 working days following initial adverse agency action on agency-level protest.
3. Third low bidder is not an interested party to question awardee's responsibility or responsiveness since it would not be in line for award even if the issue were resolved in its favor.

DECISION

Custom Training Aids, Inc., protests the award of a contract to Blane Corporation under invitation for bids (IFB) No. F26600-89-B0075, issued by Nellis Air Force Base, Nevada, for a full-scale high fidelity model of a Soviet T-80 tank.

We dismiss the protest.

Custom first complains that the solicitation called for an accuracy of reproduction of plus or minus 1 percent but only poor quality copies of photographs of the T-80 were provided to guide bidders. Custom states that bidders actually had varying degrees of knowledge about the T-80 and therefore bid prices would vary depending on the degree of sophistication of the model being offered. Custom contends, therefore, that the Air Force would not be evaluating equivalent bid items.

Custom's first basis of protest is essentially against the alleged insufficiency of the specifications and the failure to use negotiated procedures. In response to a letter from Custom dated August 31, 1989, which alleged essentially the

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same solicitation defects, on September 6, the Air Force amended the IFB and required potential bidders to have the appropriate security clearance to obtain the information required to meet the IFB requirements. However, the Air Force did not change the IFB to a negotiated procurement and advised that the action taken was in response to Custom's concerns. The bid opening date was extended to allow bidders to meet this new requirement.

Custom responded by submitting with its bid another request that bids be evaluated on factors other than price alone. Bid opening was held on September 18, the contract was awarded to Blane, as the low bidder, on September 26 and Custom protested to this Office on October 2.

Custom contends its protest was timely because it was filed within 10 days of the award. Although Custom does not characterize its earlier August 31 letter to the Air Force as a protest, Custom did set out its concerns in that letter and requested that corrective action be taken. On September 6, the Air Force amended the solicitation to respond to Custom's concerns, and proceeded to bid opening, on September 18.

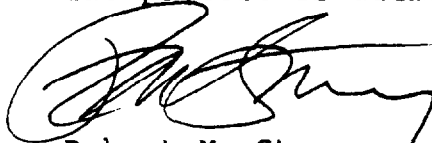
The record is not clear whether Custom's August 31 letter constituted an agency-level protest under our Bid Protest Regulations. If Custom's August 31 letter is considered an agency-level protest under our Bid Protest Regulations, the September 6 amendment in response to Custom's protest was the initial adverse action on that protest. Custom was required to protest to our Office within 10 working days of actual or constructive knowledge of the agency adverse action on its protest. 4 C.F.R. § 21.2(a)(3) (1989). Therefore, Custom's October 2 protest of alleged solicitation defects, filed more than 10 working days after September 6, is untimely under our Bid Protest Regulations.

However, if Custom's August 31 letter is not considered an agency-level protest of solicitation defects, as it contends, Custom nevertheless was required to file a protest prior to bid opening in order to be considered timely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1). Custom's letter, which was submitted along with Custom's bid requesting that bids be evaluated on other than price alone, does not constitute an agency-level protest. A protest filed with a bid cannot properly be considered as filed before bid opening since the contracting officer is not generally authorized to open the bid until the time set for bid opening. Americover Co., B-234352, Mar. 28, 1989, 89-1 CPD ¶ 320.

Custom also contends that Blane could not meet the specifications because of its inaccurate information on the T-80 and that Blane intended to use its T-72 molds to fabricate a T-80 model. However, Custom was the fifth low bidder and would not be line for award, even if we were to resolve this issue in its favor. Therefore, Custom lacks standing as an interested party, under our Bid Protest Regulations, and is not entitled to protest this issue. 4 C.F.R. §§ 21.0(a); 21.1(a), Esilux Corp., B-234689, June 8, 1989, 89-1 CPD ¶ 538.

Finally, with regard to Custom's request for the right to be present to evaluate whether Blane complies with the specifications when Blane delivers its model T-80 to the Air Force, we know of no requirement to afford such a privilege to a disappointed bidder.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the printed name and title.

Robert M. Strong
Associate General Counsel